REMARKS (37 CFR 1.111)

Applicant has considered all points made by the Examiner in the Office Action and has complied with the applicable rules.

35 U.S.C. § 102 Rejection

Claims 1, 2, 5, and 9 were rejected under 35 U.S.C. § 102(b) as being anticipated by Krummenacher 3,939,825 ("'825"). Anticipation is a factual determination. In order to establish anticipation, it is incumbent upon the Examiner to identify in a single prior art reference disclosure of each and every element of the claims in issue, arranged as in the claim. Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 1458, 221 U.S.P.Q. 481 (Fed. Cir. 1984); In re Schaumann, 572 F.2d 312, 197 U.S.P.Q. 5 (C.C.P.A. 1978) (anticipation is measured with respect to the terms of the claims in issue).

When the claimed invention is not identically disclosed in a reference, and instead requires picking and choosing among a number of different options disclosed by the reference, the reference does not anticipate. Akzo N.V. v. U.S. Int'l Trade Comm'n, 808 F.2d 1471, 1480, 1 U.S.P.Q.2d 1241, 1245-46 (Fed. Cir. 1986), cert. denied,482 U.S. 909, 107 S.Ct. 2490 (1987).

Applicant respectfully traverses the rejection of Claims 1, 2, 5, and 9. The '825 patent does not disclose each of the elements of these claims. Without limitation, Claim 1 includes a limitation that the foot receptacle includes a top surface. The makes no mention of such characteristic, in fact, it specifically claims and describes a device with an open top. For example, Claims 1 and 13 of the '825 patent specifically claim, in part, "an open top treatment chamber." The '825 patent likewise describes its invention as having an "open top" in the specification (column 1, lines 51-55 and column 2, lines 37-40).

The '825 patent does not anticipate Claims 2, 5, and 9 in that they are dependant upon Claim 1 and since all elements of the independent Claim 1 are not disclosed, then likewise, the '825 patent does not disclose all of the elements, and the combination of elements, of the dependent Claims.

Thus, the patent cited by the Examiner does not disclose each and every element of the claims at issue.

35 U.S.C. § 103(a) Rejections

Pursuant to 35 U.S.C. §103(a), the Examiner has rejected Claims 3 and 4 on the basis that such claims are unpatentable over the '825 patent in view of Wheelwright, US publication 2005/0211270 ("'270"). Applicant respectfully traverses this rejection because the '270 publication is not valid prior art as to Applicant's application. Applicant's application was filed February 25, 2004, prior to the '270 publication's filing date of March 29, 2004.

Claim Objections

The Examiner has objected to Claims 6-8 and 10-33 as depending from a rejected base claim. The Examiner has further indicated that these claims would be allowable if amended to include all limitations of the base claim and any intervening claim(s). The '825 patent does not anticipate Claims 6-8 and 10-31 in that they are dependant upon Claim 1 and since all elements of the independent Claim 1 are not disclosed, then likewise, the '825 patent does not disclose all of the elements, and the combination of elements, of the dependent Claims.

Applicant notes that Claim 32 is an independent claim from which Claim 33 depends, making the objection appear moot.
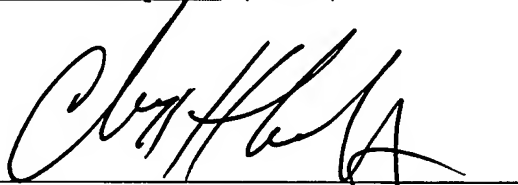
CONCLUSION

In view of the above, it is submitted that the claims are in a condition for allowance. Reconsideration and withdrawal of the rejections and objections are hereby requested. Allowance of the pending claims at an early date is solicited.

If impediments to allowance of the pending claims remain, and a telephone conference between the undersigned and the examiner would help remove such impediments in the opinion of the examiner, a telephone conference is respectfully requested.

Respectfully submitted,

LOEFFLER TUGGEY PAUERSTEIN ROSENTHAL L.L.P.
755 East Mulberry Avenue, Suite 200
San Antonio, TX 78212
(210) 244-8858 (telephone)
(210) 354-4034 (facsimile)
cwhite@loefflerllp.com (e-mail)

By: _____
Cline H. White, Reg. No. 45,213